

Panaji, 26th February, 2008 (Phalguna 7, 1929)

SERIES II No. 47

# OFFICIAL GAZETTE



## GOVERNMENT OF GOA

### SUPPLEMENT No. 3

#### GOVERNMENT OF GOA

Department of Labour

#### Notification

No. 28/18/2007-LAB/44

The following Award passed by the Industrial Tribunal of Goa at Panaji-Goa on 11-12-2007 in reference No. IT/4/2007 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*B. S. Kudalkar*, Under Secretary (Labour).

Porvorim, 4th January, 2008.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT-I, AT PANAJI-GOA

(Before Dilip K. Gaikwad, Presiding Officer)

Ref. No. IT/4/2007

Workmen rep., by  
The General Secretary,  
Gomantak Mazdoor Sangh,  
Shetye Sankul,  
3rd Floor, Tisk,  
Ponda, Goa.

..... Workman/Party I

V/s

M/s. Hindustan Lever Ltd.,  
Kundaim Industrial Estate,  
Kundaim, Goa.

..... Employer/Party II

Party I/Workmen — are represented by P. Gaonkar.

Party II/Employer — is represented by Adv. G. K. Sardesai.

#### INTERIM AWARD

(Passed on this 11th day of December, 2007)

1. This is an application for interim relief.
2. Facts giving rise to the present application, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1) (d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947), under order dated 24-12-2006, has referred to this Industrial Tribunal following dispute for adjudication:-

- “(1) Whether the following demands raised by the General Secretary, Gomantak Mazdoor Sangh, vide letter dated 19-9-2004 before the management of M/s. Hindustan Lever Limited, Industrial Estate, Kundaim, Goa are legal and justified?

#### CHARTER OF DEMANDS

##### Demand No. 1: Grades

W-1: 2050-75-2425-100-2925-125-3550-150-4300-175-5175-200-6175.

W-2: 2150-100-2650-125-3275-150-4025-175-4900-200-5900-225-2025.

##### Demand No. 2: Flat Rise

It is demanded that all the workmen shall be given a flat rise at the rate of Rs. 1,850/- and the same shall be added to the existing basic pay and thereafter fitted in the revised pay scale in the higher stage.

##### Demand No. 3: Seniority Increments

It is demanded that the workmen should be given seniority increments as mentioned below:

Service upto 3 years	: one increment.
Service from 3 years to 5 years	: two increments.

Service from 5 years to 7 years : three increments.  
Service from 7 years and above : four increments.

**Demand No. 4: Variable Dearness Allowance**

It is demanded that the Variable Dearness Allowance shall be paid at the revised rate of Rs. 4/- per point rise beyond 1770 points (1960-100). The computation of Variable Dearness Allowance shall be made quarterly, based on the average consumer price index of the preceding quarter. The amount of Variable Dearness Allowance upto 1770 points shall be merged in the basic.

**Demand No. 5: House Rent Allowance**

It is demanded that an amount of Rs. 2,000/- should be added to the existing House Rent Allowance, as the cost of accommodation is very high in Goa being a tourist State.

**Demand No. 6: Children Education Allowance**

It is demanded that the Children Education Allowance shall be paid at the rate of Rs. 750/- per workmen per month.

**Demand No. 7: Conveyance Allowance**

It is demanded that all workmen shall be paid Conveyance Allowance at the rate of Rs. 950/- per month.

**Demand No. 8: Transport facility**

It is demanded that free transport facility should be provided to those workmen who are presently not provided with this facility. The details of routes shall be given at the time of negotiations.

**Demand No. 9: Paid Holidays**

It is demanded that all the workmen shall be granted paid holidays at the rate of 16 days per year.

**Demand No. 10: Leave**

It is demanded that all the workmen should be given leave on the following basis:-

(A) *Earned Leave*: The workmen should be given earned leave at the rate of 35 days per year with accumulation upto 120 days and leave shall be allowed to be taken 10 times in a year.

(B) *Casual Leave*: The workmen should be given casual leave at the rate of 15 days per year with encashment facility.

(C) *Sick Leave*: Those workmen who are covered under ESIC shall be given sick leave at the rate of 15 days per year. Those workmen who are outside the purview of ESIC shall be granted 25 days sick leave per year and accumulation upto 60 days.

**Demand No. 11: Leave Travel Assistance**

It is demanded that Leave Travel Assistance should be paid at the revised rate of Rs. 6,000/- per annum

with minimum of four days earned leave. The amount shall be paid one week before the commencement of the leave.

**Demand No. 12: Medical Reimbursement**

It is demanded that all the medical expenses incurred by the workmen shall be reimbursed and an amount of Rs. 3,500/- per year shall be paid as medical allowance to meet the medical expenses of the family.

**Demand No. 13: Loan**

It is demanded that interest free loan of Rs. 2,00,000/- should be granted for house repair and construction of house. And Rs. 50,000/- towards the purchase of scooter, house hold articles or towards marriage expenditure of self or his/her family member, etc.

**Demand No. 14: Yearly Gifts**

It is demanded that workman should be given yearly gifts of minimum of Rs. 2,000/- per year for Ganesh Festival.

**Demand No. 15: Festival Allowance**

It is demanded that all the workmen shall be granted festival allowance once in a year at the time of festival of Rs. 3,000/- each to meet the additional expenses incurred by workmen for such festival.

**Demand No. 16: Payment of gratuity**

It is demanded that all the workmen who have worked for more than 5 years shall be paid gratuity at the rate of 30 days wages per year of service.

**Demand No. 17: Employment next to Kin**

It is demanded that the kin of the workmen who died or retired shall be given employment in the company.

**Demand No. 18: Bonus/Ex Gratia**

It is demanded that all the workers shall be paid bonus/ex-gratia at the rate of 30% of gross wages, every year before Diwali.

**Demand No. 19: Canteen Subsidy**

It is demanded that all the workmen shall be paid canteen subsidy at the rate of Rs. 750/- per month.

**Demand No. 20: Shift Allowance**

It is demanded that all the workmen who works in shifts shall be paid shift allowance at the rate of Rs. 25/- per day if worked in the second shift and Rs. 35/- per day if worked in the third shift.

**Demand No. 21: Washing Allowance**

It is demanded that all the workmen shall be paid washing allowance at the rate of Rs. 450/- per month.

**Demand No. 22: Fixed Dearness Allowance**

It is demanded that the existing Fixed Dearness Allowance should be revised to Rs. 1,550/- per month.

**Demand No. 23: Death Relief Scheme**

It is demanded that the existing Death Relief Scheme should be revised as follows:-

- (1) Towards funeral expenses : Rs. 10,000/-
- (2) Solatium : Rs. 1,50,000/-

**Demand No. 24: Compensatory Allowance**

It is demanded that those workmen who are working in the 3rd shift are asked to work in the 2nd shift, such workman shall be paid compensatory allowance at the rate of one day, additional wages as compensatory allowance and if the workmen are asked to work in the first shift after working in the second shift, such workmen shall be paid half day wages as compensatory allowance for the days worked.

**Demand No. 25: Total Productive Maintenance Allowance**

It is demanded that all the workmen shall be paid Total Productive Maintenance Allowance at the rate of Rs. 500/- per month.

**Demand No. 26**

Union reserves the right to amend, add, and delete any demand during the time of negotiation.

- (2) If not, what relief the workmen are entitled to?

3. In response to notices both parties put their appearance in this Industrial Tribunal. Party I/Workmen presented claim statement on 18-5-2007 at Exb. 4. Party II/ Employer filed its written statement on 18-7-2007 at Exb. 6. Party I/Workmen submitted rejoinder on 23-8-2007 at Exb.7.

4. On basis of pleadings issues are framed on 28-9-2007 at Exb. 8.

5. The Party I by filing the application in hand inter alia contended that the Party II which is a company registered under Indian Companies Act is manufacturing soaps and detergents. The Party I/Workmen are working in establishment of the Party II since last more than fifteen years. Period of settlement which had taken place on 22-2-2001 came to an end on 31-12-2004. The Gomantak Mazdoor Sangh registered under the Trade Unions Act, 1926 (hereinafter in short referred to as the said Union) representing the Party I/Workmen, under its letter dated 9-5-2005 placed the charter of demands, and raised industrial dispute before the Asstt. Labour Commissioner, Ponda. The Party II did not consider the Charter of Demands. Conciliation proceeding held by the Asstt. Labour Commissioner ended in failure. Therefore, the Government of Goa, under its order dated 24-12-2006 has referred to this Industrial Tribunal the dispute for adjudication as stated earlier.

6. According to the Party I/Workmen, the Party II in order to implement unfair labour practice and to suppress demands raised by them entered into settlement as per provision contained in Section 2(p) of the said Act, 1947 with newly formed group of workers working in establishment of the Party II. Several causes

of the said settlement are unfair resulting into contracting out their existing benefits. They are getting the same wages since the time of settlement dated 22-2-2001. There is considerable increase in price index. There is vast difference paid to junior workers on one hand and the senior most workers on the other working in establishment of the Party II. The wages which they are getting from the month of February, 2001 are not sufficient to meet their day to day needs and requirements. The Party II is number one soap and detergent manufacturing company in India. The Party II is in a very sound financial position. The Party II is paying wages around Rs. 14,000/- per month to workers working in its factory situated at Chandiwada which is in the State of Madhya Pradesh. A period of near about two and half years is passed away since the date of raising of the demands. There is every likelihood of delay in hearing of the reference. They need to be compensated till final disposal of the reference. On these and above grounds they have prayed for interim relief at the rate of Rs. 3,500/- per month.

7. The Party II resisted the application by filing reply on 19-10-2007 at Exb. 10. According to the Party II, dispute referred for adjudication is not industrial dispute. The said Union is representing minority of workers working in its factory at Goa and as such the said Union has no locus standi to espouse cause for and on behalf of the Party I/Workmen. Demands raised by the said Union are not in conformity with principle of wage adjudication that is industry cum region. Negotiation of settlement in respect of issue which affects terms and conditions of service of large number of workers cannot be with minority union. The Industrial Tribunal cannot adjudicate on validity of settlement arrived at under provisions of the said Act, 1947. The settlement accepted by majority of workmen is binding upon those workmen also who are in minority. The Party I/ Workmen by filing the application are in fact seeking direction for implementation of their demands. If the interim relief is granted that will be unfair to majority of the workers. The Party I/Workmen did not make out prima facie case for grant of interim relief. If the interim relief is granted that will cause to it irreparable loss and prejudice. Therefore, the application is not maintainable.

8. Further, it appears from the reply that, sound financial position of company cannot be a ground to grant interim relief. There is no inter seniority between senior and junior workers working in establishment of the Party II. The new workers who are recruited after first of January, 2001 are more technically qualified than the old workers. Basic wages and personal pay of the Party I/Workmen are higher than those which are paid to the new workers. It is because of length of service. Reference of wages paid to employees working in factory of the Party II and which is situated at Chandiwada in State of Madhya Pradesh is unwarranted because that factory is not in the region where the factory in which the Party I/Workmen are working is situated. The said Union did not furnish proper justification to support

demands. On these and above grounds the Party II entreated for dismissal of the application.

9. I heard representative of the Party I and also learned advocate of Party II for considerable length of time. Representative of the Party I in addition to his oral argument filed written notes of argument (Exb. 14). Though the Party I/Workmen prayed for interim relief at the rate of Rs. 3,500/- per month their representative in the course of argument restricted claim of interim relief at Rs. 2,500/- per month.

10. Following points arise for my consideration—

1. Whether the Party I workmen are entitled to interim relief ?
2. If yes, what is quantum ?
3. What order ?

11. My findings on the above points are as follows:

1. In affirmative.
2. Rs. 2,500/- p. m. on and average.
3. Application partly granted.

#### REASONS

12. *Point No. 1.*: The Party I/Workmen by presenting claim statement (Exb. 4) prayed for declaration that the demands which are set out in earlier part of this award are just and proper and for grant of the said demands in to from the date of expiry of the previous settlement, that is, with effect from 31-12-2004. By filing the present application the Party I/Workmen are claiming interim relief at the rate of Rs. 3,500/- per month which is restricted by their representative at Rs. 2,500/- per month during course of his argument. The Party II by filing reply (Exb. 6) had challenged maintainability of this application. Representative of Party I/Workmen argued that the application is filed under Section 10(4) of the said Act, 1947. The Industrial Tribunal has power to grant interim relief during pendency of reference for final adjudication. Therefore, according to him, the application is perfectly maintainable. He relied upon decisions given by the Hon'ble High Court of Bombay in case of *C'TR Trade Union & Ors. Petitioners v/s CTR Manufacturing Industries Ltd., and Ors., Respondents, reported in 1992 I CLR 632*, in case of *M/s. Patel and Company, Petitioner v/s Workmen represented by Association of Engineering Workers and Ors., Respondents, reported in 1994 I CLR 167*, in case of *Miraj Taluka Girani Kamgar Sangh, Petitioner v/s Marathe Textile Mills, Respondents, reported in 2000 LLR 610*, and by the Hon'ble High Court of Karnataka in case of *N.G.E.F Ltd., Petitioner v/s Presiding Officer, Additional Labour Court and other, Respondents, reported in 1990 LLR 295* and of *Darshak Ltd., v/s Industrial Tribunal and another, reported in 1981 LLJ 253*. Cumulative effect of decisions from all these reported cases hits nail on head that, claim for interim relief pending the reference is maintainable and that the Industrial Court/Labour Court has power to grant interim relief.

13. To counter argument advanced by representative of the Party I/Workmen, learned advocate of the Party II

argued that the dispute is raised by Party I/Workmen who are in minority. For reference u/s 10(2) of the said Act, 1947, making of an application in the prescribed manner and on such application being made the appropriate Government has to be satisfied that the persons applying represent the majority of each party. In the present case there is nothing on record to show that the appropriate Government that is the Government of Goa satisfied itself that the said Union who is representing the Party I/Workmen is representing majority of the workers. Therefore, in his opinion the reference itself is not maintainable with result that the application in hand has also got the same fate. He relied upon decision given by the Hon'ble High Court of Bombay in case between *Poona Labour Union (through its secretary), Petitioner v/s State of Maharashtra and others, Respondents, reported in 1969 II LLJ 291*. It is not in dispute that in the present case the workmen on whose behalf the dispute is raised by the said union are in minority. There is nothing on record to show that before making the reference the Government of Goa satisfied itself that the said Union is representing majority of the workers. Observations made by the Hon'ble High Court in para No. 5 of the judgment support the argument advanced by learned advocate of the Party II. However, it should be remembered that I am dealing with application which is of interim nature. It will not be correct at this stage to jump to conclusion regarding maintainability of the reference. If any conclusion is drawn regarding maintainability of the reference at this stage, that will certainly amount in putting the cart before horse. I, therefore, refrain myself from coming to conclusion regarding maintainability of the reference. It will not be proper and correct to accept argument advanced in this regard by learned advocate of the Party II.

14. Next contention which is pressed into service by learned advocate of the Party II is that there is no specific reference by the appropriate Government that is by the Government of Goa for adjudication as to whether the Party I/Workmen are entitled to interim relief. If the Industrial Tribunal takes up issue of interim relief that will amount in transgressing scope of the reference. Therefore, according to him, the Industrial Tribunal cannot grant interim relief. The argument advanced by learned advocate can easily be dispelled by making reference of decision given by the Hon'ble Supreme Court in case of the *Management Hotel Imperial, New Delhi and others, appellants v/s Hotel Worker's Union, Respondents* reported in *AIR 1959 Supreme Court 1342*. The Hon'ble Supreme Court held in the reported case that:

*"under S. 10(4) of the Industrial Disputes Act the Industrial Tribunal has power to grant interim relief where it is admissible, as a matter incidental to the main question referred to the tribunal without itself being referred in express term. There can be no doubt that if, for example, question of reinstatement and/or compensation is referred to a tribunal for adjudication, the question of granting interim relief*

*till the decision of the tribunal with respect to the same matter would be a matter incidental thereto under S. 10(4) and need not be specifically referred in terms to the tribunal."*

15. Relying upon the above decision, I hold that, the argument advanced by learned advocate of Party II is devoid of merits and as such it must fall to the ground.

16. One more submission made by learned advocate of the Party II is that the Industrial Dispute relates to the enforcement of the right or an obligation created under the said Act, 1947. Only remedy available to workman or workmen concerned is to get an adjudication under the said Act, 1947. Section 10(4) of the said Act, 1947 does not specifically provide for grant of interim relief. Therefore, in his opinion the Industrial Tribunal or Labour Court has no jurisdiction and also power to grant interim relief and as such the application cannot be said to be maintainable. He relied upon decision given by the Hon'ble High Court of Bombay in case of *MRF Ltd., Goa, Appellant v/s Goa MRF Employees Union, Goa and Anr., Respondents, reported in 2003 II CLR 985*, order passed by the Hon'ble Supreme Court in case of *Goa MRF Employees Union, Appellant v/s M/s. MRF Ltd., Respondent* bearing Civil Appeal No. (s). 1007 of 2004 of which xerox copy is produced before me, and upon decisions given by the Hon'ble High Court of Madras in case between 1997 *M/s. R. R. Techno Mechanicals (p) Ltd., & M/s. Tool and Machine Tool Engineers, Petitioner and Democracion Labour Union, Respondent reported in 1997 LLJ 631*.

17. In case of *MRF Ltd., Goa reported in 2003 II CLR 985* the union had sought interim relief to direct the appellant to cease and desist from changing service conditions of workmen and for not implementing the seven day running system on the departments hitherto run on six day Sunday off system. This relief was sought in a complaint u/s 33 A of the said Act, 1947. The Industrial Court rejected application for interim relief on the ground that it had no power to grant interim relief in the nature of injunction. In Writ Petition the Hon'ble High Court of Bombay at Goa held that the Tribunal has such power. In writ appeal Division Bench of the Hon'ble High Court restored the order of the Industrial Tribunal.

18. It appears that as pointed out by the learned advocate of Party II, decision given by the Hon'ble High Court of Goa in case of *MRF Ltd., Goa reported in 2003 II CLR 985* was challenged by *Goa MRF Employees Union, Goa and another* by filing Civil Appeal No. (s) 1007 of 2004 before the Hon'ble Supreme Court. Question which was involved in the Civil Appeal was "Does the Industrial Tribunal have the power to grant the reliefs including in the nature of injunction in a complaint filed before it u/s 33 A of the Industrial Disputes Act, 1947". The Hon'ble Supreme Court pleased to refer the matter to a larger Bench.

19. The Hon'ble High Court of Madras in case of *M/s. RRTM (P)* reported in 1997 LLJ 631 set aside order of

interim injunction and directed the trial court to consider maintainability of suit before passing any orders in the suit.

20. Decisions from the above reported cases of *MRF Ltd., Goa, Goa MRF Employees Union, and of RRTM (P) Ltd.*, are on the question as to whether the Industrial Tribunal has power to grant interim relief which is in the shape of injunction. In the present case, the Party I/Workmen are praying for interim relief which is in the nature of monetary benefits arising out of charter of demands placed by them before Management of the Party II. In view of these distinguishable facts, with respect, I am of the opinion that, decision relied upon by learned advocate of Party II from these reported cases are not applicable to the present case. I am unable to be in agreement with argument advanced by him.

21. Relying upon decision given by the Hon'ble Supreme Court in case of the *Management of Hotel Imperial, New Delhi and others* and upon decisions from reported cases placed before me by representative of the Party I/Workmen and which are alluded supra, the best possible conclusion which will have to be drawn is that the application in hand for interim relief is maintainable during pendency of reference for final adjudication and that the Industrial Tribunal has power to grant interim relief where it is admissible as a matter incidental to the main question. I agree with argument advanced by representative of Party I/Workmen.

22. Settlement on basis of which the Party I/Workmen are still earning wages with consequential benefits, as pointed out by their representative has taken place on 22-2-2001. Xerox copy of this settlement is produced along with list Exb. 12/9. This settlement is signed by representatives of the company and by the office bearers of all Goa General Employees Union (CITU) which was representing workmen working in establishment of Party II. Period of this settlement was from 1-01-2001 to 31-12-2004. The terms of settlement were to continue even after 31-12-2004 till those are validly terminated.

23. General Secretary of the said Union which is representing the Party I/Workmen placed charter of demands on 19-09-2004 before factory Manager of the Party II. Copies of the forwarding letter and of the charter of demands are with xerox copy of settlement dated 29-04-2005 produced alongwith list Exb. 12/1. It appears that after the charter of demand was placed by General Secretary of the said Union, terms of settlement are arrived at between the employer and employees represented by majority Union Kamgarancho Ekvott. General Secretary of the said Union is not party to this terms of settlement dated 29-04-2005. List of all workmen for whose benefits this settlement dated 29-04-2005 is arrived at is also along with this settlement. Though names of the Party I/Workmen as submitted by their representative are in the list, the Party I/Workmen did not accept this settlement.

24. The settlement dated 29-04-2005 which is entered into between the Party II and the Union representing

majority of the workmen is challenged by the said Union which is representing minority of the workmen. Representative of the Party I/Workmen pointed out that clauses No. 16 and 17 of the terms of settlement dated 29-04-2005 are not fair and proper and those are contracting out. Therefore, even though the settlement which is signed by the Union representing majority of workmen can be challenged by the Union representing minority of the workmen. In support of his argument, he relied upon decisions given by the Hon'ble Supreme Court in case of *M/s. Oswal Agro Ltd., and Anr., Appellant v/s Oswal Agro Furane Workers Union and Ors., Respondents, reported in 2005 LLR 305* and by the Hon'ble High Court of Karnataka in case between *Himalaya Drug Company, Bangalore, Appellant and Himalaya Drug Company Karmikara Sangha, Bangalore, Respondent, reported 2005 II LLJ 980*.

25. The Hon'ble Supreme Court held in case of *M/s. Oswal Agro Ltd.*, and another referred to above that when an employer is under statutory obligation to seek prior permission of the appropriate Government either to close down an industrial establishment or retrench the workmen as stipulated under Chapter V-B of the Industrial Disputes Act, a settlement as arrived between the employer and the workmen for closing down of the establishment would not prevail over the statutory provisions of law.

26. The Hon'ble High Court of Karnataka held in case of *Himalaya Drug Company, Bangalore* referred to above that the constitutional right of workmen to question fairness of settlement is not taken away by workmen who have accepted benefits thereunder.

27. Learned advocate of Party II in reply argued that the settlement dated 29-04-2005 is accepted by majority of workmen working in establishment of Party II. If the settlement is arrived at by majority of workmen it must be presumed to be fair and just and not liable to be ignored merely because a small number of workers who are not parties to it or refused to accept it. Therefore, according to him, the settlement dated 29-04-2005 will have to be held to be fair and proper and same is binding upon the Party I/Workmen also. To substantiate his argument he relied upon decisions given by the Hon'ble Supreme Court in case between *Tata Engineering and Locomotive Company Ltd., and Workmen, reported in 1981 II LLJ 429*, in case of *Herbert Sons Ltd., Appellant v/s the workmen of the Herbert Sons Ltd., and others, Respondents, reported in (1976) 4 Supreme Court Cases 736*, by the Hon'ble High Court of Bombay in case of *Sarvshrmik Sangh, Petitioner v/s VVF Ltd., and another, Respondents, reported in 2002 I CLR 797*, in case between *Hindustan Lever Ltd., and Hindustan Lever Majdoor Sabha reported in 2001 I LLN 1095*. In case between *Airlines Cabin Crew Association and Indian Airlines Corporation and others, reported in 1987 I LLJ 285*, and by the Hon'ble High Court of Madras in case between *Indian Overseas Bank Officers Union and Indian Overseas Bank reported in 1993 I LLJ 719*. Decisions from all these reported cases support argument advanced by learned advocate of the Party II that if the settlement which is

entered into by majority of the workmen such settlement must be presumed to be fair and just and not liable to be ignored merely because the Union is representing minority workmen who have not accepted such settlement.

28. Learned advocate of the Party II further argued that the settlement dated 29-04-2005 challenged by representative of Party I/Workmen is arrived at between recognised union representing majority of workers and the management. Therefore, such settlement should not be disturbed. In support of his argument he relied upon observations made by the Hon'ble High Court of Calcutta in para No. 23 of judgment delivered in case of *Shaw Wallace and Company Ltd., Petitioner v/s First Industrial Tribunal, West Bengal and others, Respondents, reported in 1986 LAB IC 2030*. These observations are as follows:—

*"a settlement ought not to be interfered with so easily even though it may operate with a little bit of harshness to a section of the employees and as stated above there ought to be some amount of give and take for proper industrial peace and harmony in the country. Law courts therefore have a bounden obligation to maintain the same and to give due considerations of the settlement arrived at between the recognised union and the management".*

29. Clause No. 16 and clause No. 17 on basis of which representative of the Party I/Workmen has challenged the fairness of the settlement dated 29-4-2005 relate to compensatory off on account of bandh, hartal etc., and to national and festival holidays (paid holidays) respectively. Though the Party I/Workmen have challenged this settlement on the ground that this settlement is not fair and just, it is pertinent to note that there is no specific prayer in the claim statement to declare that this settlement is not fair and just and to set aside this settlement.

30. The Hon'ble Supreme Court held in case between *Jaihind Roadways and Maharashtra Rajya Mathadi Transport and General Kamgar Union and others, reported in [2006 (108) FLR 754]* (Supreme Court) and which is placed before me by learned advocate of the Party II that—

*"It is a settled position in law that where question is raised about the fairness of a settlement a separate industrial dispute is contemplated. In the absence of any material or reference the Tribunal was not justified in holding that the settlements were not legal."*

*Whether the settlement is tainted or unfair has to be decided if specific reference is made on that aspect.*

31. In the present case also there is no specific reference by the Government of Goa which is appropriate Government, for decision as to whether the settlement dated 29-04-2005 is unfair and unjust. As stated earlier the application in hand is for interim relief. Considering these facts and decision given by the

Hon'ble Supreme Court in case of *Jaihind Roadways* referred to above, I hold that, it will not be proper and correct to decide at this stage as to whether the settlement dated 29-4-2005 is or is not fair and proper.

32. Now I switch over to the question as to whether the Party I/Workmen are entitled to the interim relief. Representative of the Party I/Workmen argued that the Party I/Workmen are getting the same wages added with annual increments of meagre amounts from the settlement dated 22-2-2001 which was in force till 31-12-2004. Now it is the year 2007. Cost of living, and prices of essential commodities are increasing day by day. It is very difficult for the Party I/Workmen to maintain themselves and their families on the same wages which were revised before six years, that is, under the settlement dated 22-2-2001. The Party II has increased the wages around Rs. 2,700/- per month to other workers placed in the similar position under settlement dated 29-4-2005. The Party I/Workmen are not getting the same benefits only because they did not sign this settlement. The industries which are of lesser turnover and which are situated in the locality where factory of the Party II is situated, are paying more wages to the workers working in their establishments. Not only that, the Party II is paying wages near about Rs. 14,000/- per month to its employees working in the factory situated in other States. Therefore, according to him, the Party I/Workmen are entitled to get interim relief, at the rate of Rs. 2,500/- per month which is just and reasonable. In support of his argument he relied upon various decisions which I am going to refer.

33. In case between *French Motor Car Company, Ltd., and their workmen reported in 1962 II LLJ 744* wage scales were fixed under an agreement in the year 1954. Demand for revision of the wage scales was made in the year 1958 and the same was referred for adjudication in the year 1960. The Hon'ble Supreme Court laid down various factors to be considered for fixation of wage scales and held that revision in the pay scales was justified.

34. The Hon'ble Supreme Court held in para No. 24 of judgement delivered in case between *Shivaraj Fine Arts Litho Works, Etc., Etc., and State Industrial Court and others, Etc., Etc., reported in 1978 I LLJ 532* that in order to determine the fair wage including the scale of pay, the price rise, the dearness allowance, etc., the financial capacity of the concern has to be determined.

35. The Hon'ble High Court of Gujrat held in case between *Chandan Metal Products (P) Ltd., and Engineering Kamdar Union, Baroda and another reported in 1977 LLJ 27* that where the Wage Board has taken into consideration the paying capacity of the industry as a whole, it is not open to a particular unit to challenge the report on the ground that its capacity has not been considered.

36. From the above two decisions given by the Hon'ble Supreme Court and by the Hon'ble High Court of Gujrat in the reported cases of *Shivaraj Fine Arts Litho Works, Etc., Etc., and of Chandan Metal Products (P) Ltd., respectively*, it becomes crystal clear that while fixing the wage scales the financial capacity of the unit/industry also requires to be taken into consideration.

37. There was reference bearing No. CGIT-II-150/1999 in the Central Government Industrial Tribunal No. 2 at Mumbai. The Union had filed application for interim relief in that reference. Xerox copies of the said application, of reply given by the employer and of order passed by the learned Presiding Officer are placed before me by representative of the Party I/Workmen. The application is allowed by the learned Presiding Officer under order dated 18-9-2003. It appears from the application which was Exb. 35 that the employer was engaged in other line of business that is in export of iron ore. In view of this distinguishable fact and since the order dated 18-9-2003 passed on the Exb. 35 is not binding upon this Industrial Tribunal, I hold that it will not be proper and correct to rely upon the said order.

38. There was reference bearing 7/2004 between *Hindustan Lever Ltd., v/s Hindustan Lever Employees Union in Labour Court at Daman*. Xerox copy of order dated 2-1-2006 passed by Labour Judge, Daman, is placed before me by representative of the Party I/Workmen. The Labour judge has granted the application for interim relief and which was filed by the union in that reference. This order also cannot be said to be binding on this Industrial Tribunal with result that it will not be proper to rely upon it.

39. Representative of the Party I/Workmen has placed before me xerox copy of order passed by Division Bench of the Hon'ble High Court of Bombay on 10-04-2007 in Letters Patent Appeal No. 69/2007 in Writ Petition No. 8752 of 2006 (*Hindustan Lever Ltd., Appellant v/s Hindustan Lever Employees Union, Respondent*). This Letters Patent Appeal was filed by the employer against order passed by the Labour Court on 6-11-2006 rejecting application (Exb. 12) of the employer for disposing of the reference on the ground that the workmen have accepted the settlement dated 24-8-2003 which has been signed with the association of chemical workers, and therefore, nothing survives in the matter. Facts of this case are also different from that of the present one. With respect, I am of the opinion that this order will not be helpful for representative of the Party I/Workmen to support the claim of interim relief.

40. Learned advocate of Party II argued that if the interim relief is granted to the Party I/Workmen that will result in creating disparity amongst workmen. Therefore, according to him, it will not be correct to grant interim relief in favour of Party I/Workmen. He relied upon decision given by the Hon'ble High Court of Bombay in case of *VVF Ltd., and other, Petitioners v/s Sarva Sharmik Sangh & Anr., Respondents, reported in 2003 CLR 531*.

It appears from facts of this reported case that there was settlement on 10-4-2003 between petitioner and its majority union in respect of their demands. There was a clause in the settlement that benefits under settlement be given to workers who sign an undertaking agreeing to the terms of settlement. The respondent union was the minority union. It had filed complaint of unfair labour practice wherein an interim relief was granted

that the workers of the Union are entitled to benefits of settlement on signing undertaking without prejudice to demands pending in conciliation. The Hon'ble High Court of Bombay pleased to set aside the interim order and held that the net result of interim order is that it results in creating disparity amongst workmen.

41. The Hon'ble High Court of Bombay held in case of *Tata Consulting Engineer and Associates Staff Union, Appellant v/s Tata Consulting Engineers and Anr., Respondents, reported in 2002 I CLR 701* that if a workman does not give an undertaking which is a part and parcel of the voluntary settlement arrived at between the parties otherwise that in conciliation proceedings he cannot claim benefits under the said settlement.

42. In case of *Tata Press Ltd., Petitioner v/s Tata press employees Union and others, Respondents, reported in 1994 II CLR 2003*, there was a settlement. Employees were required to give undertaking before receiving benefits. Respondent No. 1 union filed complaint challenging settlement and sought relief to quash letters of acceptance of settlement and also sought interim relief. The Industrial Court granted interim relief directing the appellant to extend the benefits to workmen of respondent No. 1 even if they signed the undertaking under protest. Writ Petition which was filed against order passed by the Industrial Court was dismissed. In appeal the Hon'ble High Court held that the grant of interim relief was uncalled for in as much as respondent No. 1 has challenged in the complaint the validity of the settlement itself.

43. In the present case the Party I/Workmen did not sign the settlement dated 29-4-2004 in token of its acceptance. Though they have challenged the settlement they are not claiming interim relief based on this settlement. The interim relief claimed by them is based on entirely different footings.

44. Representative of the Party I did not show during course of the argument that the industries which are situated in the same locality and which according to him are paying more wages to their employees are engaged in the similar line of business which the Party II is carrying on. Therefore, and relying upon decision given by the Hon'ble Supreme Court in case of *French Motor Car Company Ltd., reported in 1962 II LLJ 744*, I, do not accept submission made by representative of the Party I/Workmen that the industries situated in the same locality are paying more wages to their employees and therefore that should be taken into consideration for grant of interim relief to the Party I/Workmen.

45. It is not in dispute that the Party II company is in a very sound financial position. The Party I/Workmen are getting the same wages added with annual

increments as per the settlement which has taken place in the year 2001, that is, the settlement dated 22-2-2001. Prices of essential commodities and cost of living are increasing constantly. These circumstances are certainly in favour of the Party I/Workmen. Considering these circumstances and the range of pay revision extended to other workmen placed in the similar position under the settlement dated 29-4-2005, interest of justice demands that the Party I/Workmen should be given monetary benefits as prayed for by way of interim relief. Since the Party I/Workmen did not accept the settlement dated 29-4-2005 and that they have challenged this settlement it will not be correct to direct them to give undertaking of acceptance as stated in the settlement. If the interim relief is granted that will bring the Party I/Workmen and those workmen to whom pay revision is extended under settlement dated 29-4-2005 on parity and not to disparity. I, therefore, answer the point in affirmative.

As a result of above discussion and finding given to point No. 1, I hold that the application will have to be partly granted. Increase in wages under settlement dated 29-4-2005 to other workers placed in similar position is on and average. It will be appropriate if interim relief under the present application is awarded on the same footing. The Hon'ble Supreme Court held in case of *the Management Hotel Imperial, New Delhi and others reported in AIR 1959 Supreme Court 1342* that an award as defined by Section 2(b) may be either final or interim and in either case it will have to be published as required by Section 17. Therefore this interim award will have to be submitted to the appropriate Government, that is, to the Government of Goa. With this, I proceed to pass interim award by order as follows:

#### ORDER

1. The application partly granted.
2. The Party II do pay to the Party I/Workmen represented by the said Union Rs. 2,500/- per month (Rupees Two thousand five hundred p.m.) on and average as interim relief from the date of this application.
3. No order as to costs.
4. The interim award be submitted to the Government of Goa as per provision contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-  
(Dilip K. Gaikwad),  
Presiding Officer,  
Industrial Tribunal-  
cum-Labour Court-I.